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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-220549.2, B-220373,  
B-220796, B-220843 **DATE:** January 8, 1986  
**MATTER OF:** Eastern Metal Products & Fabricators, Inc.

## DIGEST:

Agency may properly reject a bid based on a finding that bidder's individual sureties on a bid bond are unacceptable because they failed to disclose outstanding obligations in their Affidavits of Individual Surety.

Eastern Metal Products & Fabricators, Inc. (Eastern) protests the rejection of its bids under invitation for bids (IFB) Nos. F44600-85-B-0087, F44600-85-B-0085, F44600-85-B-0082, F44600-85-B-0066 issued by the Langley Air Force Base for various repair and construction projects. Eastern was the low bidder or in line for award under each IFB. The Air Force rejected Eastern's bids because it found that the bid bonds submitted with the bids were deficient.

We deny the protests.

Under each IFB, bidders were required to submit bid bonds equal to 20 percent of their bid prices. Eastern was bonded by individual rather than corporate sureties and submitted a completed Affidavit of Individual Surety (Standard Form 28). Item 10 of the Affidavit required the individual sureties to disclose all other bonds on which they were listed as sureties at the time they executed the bid bond for Eastern. After bids were opened, the Air Force investigated the acceptability of the individuals proposed by Eastern as sureties. The Air Force discovered that the named sureties had pledged the same assets under a number of additional solicitations which the sureties had not disclosed on the affidavits submitted with the bids. For example, under IFB No. F44600-85-B-0066, the Air Force indicates that it discovered that one surety had provided bonds for seven contractual actions and the other surety had provided bonds for three contractual actions that were not disclosed and for which the potential for liability still existed. In addition, the Air Force notes that under IFB No. F44600-85-B-0087 a surety failed to disclose that the

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same assets were pledged on a solicitation issued by the Department of the Navy that had the same bid opening date. Although the actual number of contracts and/or bids which were not disclosed by the sureties varied with each affidavit, the Air Force argues that a pattern of nondisclosure was clearly evident.

In addition, the Air Force indicates that its investigation was limited to two nearby Department of Defense (DOD) installations and that there are five other DOD activities in the area. Based on the pattern of nondisclosure, the Air Force argues that it is reasonable to assume that the sureties may have additional outstanding obligations which have not been disclosed. The Air Force indicates that the dollar amount of the sureties' outstanding obligations exceeds the value of the pledged assets and that the Air Force was justified in rejecting the bids.

Eastern contends that the Navy's investigation was biased and inaccurate. Eastern argues that the individual sureties disclosed all obligations on which they were low and where award was anticipated, and that no disclosure was necessary for solicitations where Eastern was not in line for award. In addition, Eastern alleges that the sureties liability on some of the bonds which the Air Force asserts should have been disclosed is purely speculative since the contracts involved have been completed or substantially completed. Eastern argues that the individual sureties disclosed all information and that the sureties net worth was adequate to cover the bonds in question.

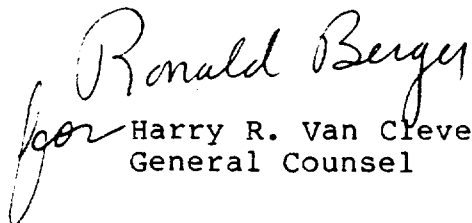
The Affidavit of Individual Surety is a document separate from the bid bond itself and serves solely as an aid in determining the responsibility of an individual surety. Consolidated Services, Inc., B-206413.3, Feb. 28, 1983, 83-1 CPD ¶ 192. We have held that a contracting agency may properly consider the failure of an individual surety to disclose outstanding bond obligations as a factor in determining the responsibility of the bidder. Singleton Contracting Corp., B-216536, Mar. 27, 1985, 85-1 CPD ¶ 355; Dan's Janitorial Service, Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217. A surety must disclose all other bond obligations under Item 10 of the Affidavit, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed determination concerning the surety's financial soundness. Id. For this reason, Item 10 of the Affidavit provides space for the surety to list "all other bonds on which [he is] surety."

In reviewing a bidder's responsibility, the contracting officer is vested with a wide range of discretion and business judgment, and this Office will defer to the contracting officer's decision unless the protester shows that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. C.W. Girard, C.M., 64 Comp. Gen. 175 (1984), 84-2 CPD ¶ 704.

We believe that, regardless of the actual liability that may remain on any outstanding bonds, a continuing pattern on the part of Eastern's sureties in failing to disclose the bond obligations provides the contracting officer with a reasonable basis upon which to find the protester nonresponsive. Consolidated Marketing Network, Inc.--Request for Reconsideration, B-218104.2, June 12, 1985, 85-1 CPD ¶ 675. Although Eastern argues that its sureties' liability on certain bonds is minimal or nonexistent, that is a judgment that must be made by the contracting officer based on a full disclosure of the surety's undertakings; the surety may not usurp the contracting officer's discretion by deciding whether or not to disclose the existence of potential liability on the bond. The record shows that Eastern's sureties did not fully disclose all other bonds on which they were sureties, and we conclude that the Air Force had a reasonable basis to reject Eastern's sureties for their nondisclosure.

Eastern also alleges that the Air Force's actions amounts to bias against the firm. Since we have determined, however, that the contracting officer's actions in finding Eastern's sureties unacceptable were reasonable and Eastern has submitted no independent evidence of bias, Eastern's allegation is mere speculation and does not meet the protester's burden of affirmatively proving its case.

The protests are denied.

  
for Harry R. Van Cleve  
General Counsel